

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KARL KEVIN HILL,

Petitioner,

v.

Civil Action No. 2:10cv75

JOEL ZIEGLER, Warden,

Respondent.

ORDER

On August 6, 2010, Magistrate Judge John S. Kaull filed his Report and Recommendation (“R&R”)(Doc. 17), wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the R&R. Petitioner filed a response on September 8, 2010 stating that he had no objections to the R&R (Doc. 23). Accordingly, the Court will proceed with consideration of the R&R reviewing for clear error.¹

Upon examination of the report from the Magistrate Judge, it appears to this Court that the issues raised by the Petitioner’s Application for Habeas Corpus, filed pursuant to 28 U.S.C. §2241, were thoroughly considered by Magistrate Judge Kaull in his R&R. As found by the Magistrate Judge, a § 2241 petition is used to attack the manner in which a sentence is executed. Petitioner’s attempt to assert substandard medical care at F.C.I. Morgantown is not properly before this Court as a § 2241 petition, and should instead be raised as a civil rights action. This Court, upon a review for clear error, is of the opinion

¹The failure of a party to object to a R&R waives the party’s right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

that the R&R accurately reflects the law applicable to this case. Therefore, it is

ORDERED that Magistrate Judge Kaull's R&R (Doc. 17) be, and the same hereby is, **ADOPTED**. Accordingly, it is

ORDERED that the petitioner's Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus (Doc. 1) shall be, and the same hereby is **DENIED** and **DISMISSED WITHOUT PREJUDICE** to the petitioner's right to re-file his claims as a civil rights action. It is further


ORDERED that the Clerk shall enter judgment for the respondent. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to all parties appearing herein.

DATED: February 9, 2011.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE